

**Calendar No. 684**

103D CONGRESS  
2D SESSION

**S. 2375**

**A BILL**

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

SEPTEMBER 28 (legislative day, SEPTEMBER 12), 1994

Reported with an amendment

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IN THE SENATE OF THE UNITED STATES

AUGUST 9 (legislative day, AUGUST 8), 1994

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

AUGUST 25 (legislative day, AUGUST 18), 1994

Reported by Mr. HOLLINGS, without amendment and without recommendation  
Ordered referred to the Committee on the Judiciary

SEPTEMBER 28 (legislative day, SEPTEMBER 12), 1994

Reported by Mr. BIDEN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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**A BILL**

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. INTERCEPTION OF DIGITAL AND OTHER COM-**  
 2 **MUNICATIONS.**

3 (a) ~~IN GENERAL.~~—Part I of title 18, United States  
 4 Code, is amended by inserting after chapter 119 the fol-  
 5 lowing new chapter:

6 **“CHAPTER 120—TELECOMMUNICATIONS**  
 7 **CARRIER ASSISTANCE TO THE GOV-**  
 8 **ERNMENT**

“Sec.

“2601. Definitions.

“2602. Assistance capability requirements.

“2603. Notices of capacity requirements.

“2604. Systems security and integrity.

“2605. Cooperation of equipment manufacturers and providers of telecommuni-  
 cations support services.

“2606. Technical requirements and standards; extension of compliance date.

“2607. Enforcement orders.

“2608. Reimbursement of telecommunications carriers.

9 **“§ 2601. Definitions**

10 “(a) ~~DEFINITIONS.~~—In this chapter—

11 “the terms defined in section 2510 have, re-  
 12 spectively, the meanings stated in that section.

13 “‘call identifying information’—

14 “(A) means all dialing or signalling infor-  
 15 mation associated with the origin, direction,  
 16 destination, or termination of each communica-  
 17 tion generated or received by the subscriber  
 18 equipment, facility, or service of a telecommuni-  
 19 cations carrier that is the subject of a court  
 20 order or lawful authorization; but

1           “(B) does not include any information that  
2           may disclose the physical location of the sub-  
3           scriber (except to the extent that the location  
4           may be determined from the telephone number).-

5           “‘Commission’ means the Federal Communica-  
6           tions Commission.-

7           “‘government’ means the government of the  
8           United States and any agency or instrumentality  
9           thereof, the District of Columbia, any common-  
10          wealth, territory, or possession of the United States,  
11          and any State or political subdivision thereof author-  
12          ized by law to conduct electronic surveillance.-

13          “‘information services’—

14               “(A) means the offering of a capability for  
15               generating, acquiring, storing, transforming,  
16               processing, retrieving, utilizing, or making  
17               available information via telecommunications;  
18               and

19               “(B) includes electronic publishing and  
20               messaging services; but

21               “(C) does not include any use of any such  
22               capability for the management, control, or oper-  
23               ation of a telecommunications system or the  
24               management of a telecommunications service.-

1           “‘provider of telecommunications support serv-  
2           ices’ means a person or entity that provides a prod-  
3           uct, software, or service to a telecommunications  
4           carrier that is integral to such carrier’s switching or  
5           transmission of wire or electronic communications.

6           “‘telecommunications carrier’—

7                   “(A) means a person or entity engaged in  
8                   the transmission or switching of wire or elec-  
9                   tronic communications as a common carrier for  
10                  hire (within the meaning of section 3(h) of the  
11                  Communications Act of 1934 (47 U.S.C.  
12                  153(h))); and

13                  “(B) includes—

14                   “(i) a person or entity engaged in pro-  
15                   viding commercial mobile service (as de-  
16                   fined in section 332(d) of the Communica-  
17                   tions Act of 1934 (47 U.S.C. 332(d))); and

18                   “(ii) a person or entity engaged in  
19                   providing wire or electronic communication  
20                   switching or transmission service to the ex-  
21                   tent that the Commission finds that such  
22                   service is a replacement for a substantial  
23                   portion of the local telephone exchange  
24                   service and that it is in the public interest  
25                   to deem such a person or entity to be a

1 telecommunications carrier for purposes of  
2 this chapter; but

3 ~~“(C) does not include persons or entities~~  
4 ~~insofar as they are engaged in providing infor-~~  
5 ~~mation services.~~

6 **~~§ 2602. Assistance capability requirements~~**

7 ~~“(a) CAPABILITY REQUIREMENTS.—Except as pro-~~  
8 ~~vided in subsections (b), (c), and (d) of this section, and~~  
9 ~~subject to section 2607(c), a telecommunications carrier~~  
10 ~~shall ensure that its services or facilities that provide a~~  
11 ~~customer or subscriber with the ability to originate, termi-~~  
12 ~~nate, or direct communications are capable of—~~

13 ~~“(1) expeditiously isolating and enabling the~~  
14 ~~government to intercept, to the exclusion of any~~  
15 ~~other communications, all wire and electronic com-~~  
16 ~~munications carried by the carrier within a service~~  
17 ~~area to or from equipment, facilities, or services of~~  
18 ~~a subscriber of such carrier concurrently with their~~  
19 ~~transmission to or from the subscriber’s service, fa-~~  
20 ~~cility, or equipment or at such later time as may be~~  
21 ~~acceptable to the government;~~

22 ~~“(2) expeditiously isolating and enabling the~~  
23 ~~government to access call-identifying information~~  
24 ~~that is reasonably available to the carrier—~~

1           “(A) before, during, or immediately after  
2           the transmission of a wire or electronic commu-  
3           nication (or at such later time as may be ac-  
4           ceptable to the government); and

5           “(B) in a manner that allows it to be asso-  
6           ciated with the communication to which it per-  
7           tains;

8           except that, with regard to information acquired  
9           solely pursuant to the authority for pen registers  
10          and trap and trace devices (as defined in section  
11          3127), such call-identifying information shall not in-  
12          clude any information that may disclose the physical  
13          location of the subscriber (except to the extent that  
14          the location may be determined from the telephone  
15          number);

16          “(3) delivering intercepted communications and  
17          call-identifying information to the government in a  
18          format such that they may be transmitted by means  
19          of facilities or services procured by the government  
20          to a location other than the premises of the carrier;  
21          and

22          “(4) facilitating authorized communications  
23          interceptions and access to call-identifying informa-  
24          tion unobtrusively and with a minimum of inter-

1       ference with any subscriber's telecommunications  
2       service and in a manner that protects—

3               “(A) the privacy and security of commu-  
4               nications and call-identifying information not  
5               authorized to be intercepted; and

6               “(B) information regarding the govern-  
7               ment's interception of communications and ac-  
8               cess to call-identifying information.

9       ~~“(b) LIMITATIONS.—~~

10              ~~“(1) DESIGN OF FEATURES AND SYSTEMS CON-~~  
11              ~~FIGURATIONS.—~~This chapter does not authorize any  
12              law enforcement agency or officer—

13               “(A) to require any specific design of fea-  
14               tures or system configurations to be adopted by  
15               providers of wire or electronic communication  
16               service, manufacturers of telecommunications  
17               equipment, or providers of telecommunications  
18               support services; or

19               “(B) to prohibit the adoption of any fea-  
20               ture or service by providers of wire or electronic  
21               communication service, manufacturers of tele-  
22               communications equipment, or providers of tele-  
23               communications support services.



1           ~~“(2) INFORMATION SERVICES AND INTER-~~  
 2           ~~CONNECTION SERVICES AND FACILITIES.—The re-~~  
 3           ~~quirements of subsection (a) do not apply to—~~

4                     ~~“(A) information services; or~~

5                     ~~“(B) services or facilities that support the~~  
 6                     ~~transport or switching of communications for~~  
 7                     ~~the sole purpose of interconnecting tele-~~  
 8                     ~~communications carriers or private networks.~~

9           ~~“(3) ENCRYPTION.—A telecommunications car-~~  
 10           ~~rier shall not be responsible for decrypting, or ensur-~~  
 11           ~~ing the government’s ability to decrypt, any commu-~~  
 12           ~~nication encrypted by a subscriber or customer, un-~~  
 13           ~~less the encryption was provided by the carrier and~~  
 14           ~~the carrier possesses the information necessary to~~  
 15           ~~decrypt the communication.~~

16           ~~“(c) EMERGENCY OR EXIGENT CIRCUMSTANCES.—In~~  
 17           ~~emergency or exigent circumstances (including those de-~~  
 18           ~~scribed in sections 2518 (7) or (11)(b) and 3125 of this~~  
 19           ~~title and section 1805(e) of title 50), a carrier may fulfill~~  
 20           ~~its responsibilities under subsection (a)(3) by allowing~~  
 21           ~~monitoring at its premises if that is the only means of~~  
 22           ~~accomplishing the interception or access.~~

23           ~~“(d) MOBILE SERVICE ASSISTANCE REQUIRE-~~  
 24           ~~MENTS.—A telecommunications carrier offering a feature~~  
 25           ~~or service that allows subscribers to redirect, hand off, or~~

1 assign their wire or electronic communications to another  
 2 service area or another service provider or to utilize facili-  
 3 ties in another service area or of another service provider  
 4 shall ensure that, when the carrier that had been providing  
 5 assistance for the interception of wire or electronic com-  
 6 munications or access to call-identifying information pur-  
 7 suant to a court order or lawful authorization no longer  
 8 has access to the content of such communications or call-  
 9 identifying information within the service area in which  
 10 interception has been occurring as a result of the subscrib-  
 11 er's use of such a feature or service, information is avail-  
 12 able to the government (before, during, or immediately  
 13 after the transfer of such communications) identifying the  
 14 provider of wire or electronic communication service that  
 15 has acquired access to the communications.

16 **“§ 2603. Notices of capacity requirements**

17       “(a) NOTICES OF MAXIMUM AND INITIAL CAPACITY  
 18 REQUIREMENTS.—

19               “(1) IN GENERAL.—Not later than 1 year after  
 20 the date of enactment of this chapter, and after con-  
 21 sulting with State and local law enforcement agen-  
 22 cies, telecommunications carriers, providers of tele-  
 23 communications support services, and manufacturers  
 24 of telecommunications equipment, the Attorney Gen-  
 25 eral shall publish in the Federal Register and pro-

1       vide to appropriate telecommunications carrier asso-  
2       ciations, standard-setting organizations, and fora—

3               “(A) notice of the maximum capacity re-  
4       quired to accommodate all of the communica-  
5       tion interceptions, pen registers, and trap and  
6       trace devices that the Attorney General esti-  
7       mates that government agencies authorized to  
8       conduct electronic surveillance may conduct and  
9       use simultaneously; and

10              “(B) notice of the number of communica-  
11       tion interceptions, pen registers, and trap and  
12       trace devices, representing a portion of the  
13       maximum capacity set forth under subpara-  
14       graph (A), that the Attorney General estimates  
15       that government agencies authorized to conduct  
16       electronic surveillance may conduct and use si-  
17       multaneously after the date that is 4 years  
18       after the date of enactment of this chapter.

19              “(2) BASIS OF NOTICES.—The notices issued  
20       under paragraph (1) may be based upon the type of  
21       equipment, type of service, number of subscribers,  
22       geographic location, or other measure.

23              “(b) COMPLIANCE WITH CAPACITY NOTICES.—

24              “(1) INITIAL CAPACITY.—Within 3 years after  
25       the publication by the Attorney General of a notice

1 of capacity requirements or within 4 years after the  
2 date of enactment of this chapter, whichever is  
3 longer, a telecommunications carrier shall ensure  
4 that its systems are capable of—

5 “(A) expanding to the maximum capacity  
6 set forth in the notice under paragraph (1)(A);  
7 and

8 “(B) accommodating simultaneously the  
9 number of interceptions, pen registers, and trap  
10 and trace devices set forth in the notice under  
11 paragraph (1)(B).

12 “(2) PERMANENT CAPACITY.—After the date  
13 described in paragraph (1), a telecommunications  
14 carrier shall ensure that it can accommodate expedi-  
15 tiously any increase in the number of communication  
16 interceptions, pen registers, and trap and trace de-  
17 vices that authorized agencies may seek to conduct  
18 and use, up to the maximum capacity requirement  
19 set forth in the notice under paragraph (1)(A).

20 “(c) NOTICES OF INCREASED MAXIMUM CAPACITY  
21 REQUIREMENTS.—

22 “(1) The Attorney General shall periodically  
23 provide to telecommunications carriers written notice  
24 of any necessary increases in the maximum capacity

1 requirement set forth in the notice under subsection  
2 (b)(1).

3 “(2) Within 3 years after receiving written no-  
4 tice of increased capacity requirements under para-  
5 graph (1), or within such longer time period as the  
6 Attorney General may specify, a telecommunications  
7 carrier shall ensure that its systems are capable of  
8 expanding to the increased maximum capacity set  
9 forth in the notice.

10 **“§ 2604. Systems security and integrity**

11 “A telecommunications carrier shall ensure that any  
12 court ordered or lawfully authorized interception of com-  
13 munications or access to call-identifying information ef-  
14 fected within its switching premises can be activated only  
15 with the affirmative intervention of an individual officer  
16 or employee of the carrier.

17 **“§ 2605. Cooperation of equipment manufacturers**  
18 **and providers of telecommunications**  
19 **support services**

20 “(a) CONSULTATION.—A telecommunications carrier  
21 shall consult, as necessary, in a timely fashion with manu-  
22 facturers of its telecommunications transmission and  
23 switching equipment and its providers of telecommuni-  
24 cations support services for the purpose of identifying any  
25 service or equipment, including hardware and software,

1 that may require modification so as to permit compliance  
 2 with this chapter.

3       ~~“(b) MODIFICATION OF EQUIPMENT AND SERV-~~  
 4 ~~ICES.—Subject to section 2607(c), a manufacturer of tele-~~  
 5 ~~communications transmission or switching equipment and~~  
 6 ~~a provider of telecommunications support services shall,~~  
 7 ~~on a reasonably timely basis and at a reasonable charge,~~  
 8 ~~make available to the telecommunications carriers using~~  
 9 ~~its equipment or services such modifications as are nec-~~  
 10 ~~essary to permit such carriers to comply with this chapter.~~

11 **“§ 2606. Technical requirements and standards; ex-**  
 12 **tension of compliance date**

13       ~~“(a) SAFE HARBOR.—~~

14       ~~“(1) CONSULTATION.—To ensure the efficient~~  
 15 ~~and industry-wide implementation of the assistance~~  
 16 ~~capability requirements under section 2602, the At-~~  
 17 ~~torney General, in coordination with other Federal,~~  
 18 ~~State, and local law enforcement agencies, shall con-~~  
 19 ~~sult with appropriate associations and standard-set-~~  
 20 ~~ting organizations of the telecommunications indus-~~  
 21 ~~try.~~

22       ~~“(2) COMPLIANCE UNDER ACCEPTED STAND-~~  
 23 ~~ARDS.—A telecommunications carrier shall be found~~  
 24 ~~to be in compliance with the assistance capability re-~~  
 25 ~~quirements under section 2602, and a manufacturer~~

1 of telecommunications transmission or switching  
 2 equipment or a provider of telecommunications sup-  
 3 port services shall be found to be in compliance with  
 4 section 2605, if the carrier, manufacturer, or sup-  
 5 port service provider is in compliance with publicly  
 6 available technical requirements or standards are  
 7 adopted by an industry association or standard-set-  
 8 ting organization or by the Commission under sub-  
 9 section (b) to meet the requirements of section 2602.

10 “(3) ABSENCE OF STANDARDS.—The absence  
 11 of technical requirements or standards for imple-  
 12 menting the assistance capability requirements of  
 13 section 2602 shall not—

14 “(A) preclude a carrier, manufacturer, or  
 15 services provider from deploying a technology or  
 16 service; or

17 “(B) relieve a carrier, manufacturer, or  
 18 service provider of the obligations imposed by  
 19 section 2602 or 2605, as applicable.

20 “(b) FCC AUTHORITY.—

21 “(1) IN GENERAL.—If industry associations or  
 22 standard-setting organizations fail to issue technical  
 23 requirements or standards or if a government agen-  
 24 cy or any other person believes that such require-  
 25 ments or standards are deficient, the agency or per-

1 son may petition the Commission to establish, by no-  
 2 tice and comment rulemaking or such other proceed-  
 3 ings as the Commission may be authorized to con-  
 4 duct, technical requirements or standards that—

5 “(A) meet the assistance capability re-  
 6 quirements of section 2602;

7 “(B) protect the privacy and security of  
 8 communications not authorized to be inter-  
 9 cepted; and

10 “(C) serve the policy of the United States  
 11 to encourage the provision of new technologies  
 12 and services to the public.

13 “(2) TRANSITION PERIOD.—If an industry tech-  
 14 nical requirement or standard is set aside or sup-  
 15 planted as a result of Commission action under this  
 16 section, the Commission, after consultation with the  
 17 Attorney General, shall establish a reasonable time  
 18 and conditions for compliance with and the transi-  
 19 tion to any new standard, including defining the ob-  
 20 ligations of telecommunications carriers under sec-  
 21 tion 2602 during any transition period.

22 “(c) EXTENSION OF COMPLIANCE DATE FOR FEA-  
 23 TURES AND SERVICES.—

24 “(1) PETITION.—A telecommunications carrier  
 25 proposing to deploy, or having deployed, a feature or



1 service within 4 years after the date of enactment of  
 2 this chapter may petition the Commission for 1 or  
 3 more extensions of the deadline for complying with  
 4 the assistance capability requirements under section  
 5 2602.

6 “(2) GROUND FOR EXTENSION.—The Commis-  
 7 sion may, after affording a full opportunity for hear-  
 8 ing and after consultation with the Attorney Gen-  
 9 eral, grant an extension under this paragraph, if the  
 10 Commission determines that compliance with the as-  
 11 sistance capability requirements under section 2602  
 12 is not reasonably achievable through application of  
 13 technology available within the compliance period.

14 “(3) LENGTH OF EXTENSION.—An extension  
 15 under this paragraph shall extend for no longer than  
 16 the earlier of—

17 “(A) the date determined by the Commis-  
 18 sion as necessary for the carrier to comply with  
 19 the assistance capability requirements under  
 20 section 2602; or

21 “(B) the date that is 2 years after the date  
 22 on which the extension is granted.

23 “(4) APPLICABILITY OF EXTENSION.—An ex-  
 24 tension under this subsection shall apply to only that

1 part of the carrier's business on which the new fea-  
 2 ture or service is used.

3 **~~“§ 2607. Enforcement orders~~**

4 ~~“(a) ENFORCEMENT BY COURT ISSUING SURVEIL-~~  
 5 ~~LANCE ORDER.—If a court authorizing an interception~~  
 6 ~~under chapter 119, a State statute, or the Foreign Intel-~~  
 7 ~~ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)~~  
 8 ~~or authorizing use of a pen register or a trap and trace~~  
 9 ~~device under chapter 206 or a State statute finds that a~~  
 10 ~~telecommunications carrier has failed to comply with the~~  
 11 ~~requirements in this chapter, the court may direct that~~  
 12 ~~the carrier comply forthwith and may direct that a pro-~~  
 13 ~~vider of support services to the carrier or the manufac-~~  
 14 ~~turer of the carrier's transmission or switching equipment~~  
 15 ~~furnish forthwith modifications necessary for the carrier~~  
 16 ~~to comply.~~

17 ~~“(b) ENFORCEMENT UPON APPLICATION BY ATTOR-~~  
 18 ~~NEY GENERAL.—The Attorney General may apply to the~~  
 19 ~~appropriate United States district court for, and the Unit-~~  
 20 ~~ed States district courts shall have jurisdiction to issue,~~  
 21 ~~an order directing that a telecommunications carrier, a~~  
 22 ~~manufacturer of telecommunications transmission or~~  
 23 ~~switching equipment, or a provider of telecommunications~~  
 24 ~~support services comply with this chapter.~~

1       “(c) ~~“~~ GROUND~~S~~ FOR ISSUANCE.—A court shall issue  
2 an order under subsection (a) or (b) only if the court finds  
3 that—

4               “(1) ~~“~~ alternative technologies or capabilities or  
5 the facilities of another carrier are not reasonably  
6 available to law enforcement for implementing the  
7 interception of communications or access to call-  
8 identifying information; and

9               “(2) ~~“~~ compliance with the requirements of this  
10 chapter is reasonably achievable through the applica-  
11 tion of available technology to the feature or service  
12 at issue or would have been reasonably achievable if  
13 timely action had been taken.

14       “(d) ~~“~~ TIME FOR COMPLIANCE.—Upon issuance of an  
15 enforcement order under this section, the court shall speci-  
16 fy a reasonable time and conditions for complying with  
17 its order, considering the good faith efforts to comply in  
18 a timely manner, any effect on the carrier’s, manufactur-  
19 er’s, or service provider’s ability to continue to do busi-  
20 ness, the degree of culpability or delay in undertaking ef-  
21 forts to comply, and such other matters as justice may  
22 require.

23       “(e) ~~“~~ LIMITATION.—An order under this section may  
24 not require a telecommunications carrier to meet the gov-  
25 ernment’s demand for interception of communications and

1 acquisition of call-identifying information to any extent in  
2 excess of the capacity for which notice has been provided  
3 under section 2603.

4 “(f) CIVIL PENALTY.—

5 “(1) IN GENERAL.—A court issuing an order  
6 under this section against a telecommunications car-  
7 rier, a manufacturer of telecommunications trans-  
8 mission or switching equipment, or a provider of  
9 telecommunications support services may impose a  
10 civil penalty of up to \$10,000 per day for each day  
11 in violation after the issuance of the order or after  
12 such future date as the court may specify.

13 “(2) CONSIDERATIONS.—In determining wheth-  
14 er to impose a fine and in determining its amount,  
15 the court shall take into account—

16 “(A) the nature, circumstances, and extent  
17 of the violation;

18 “(B) the violator’s ability to pay, the viola-  
19 tor’s good faith efforts to comply in a timely  
20 manner, any effect on the violator’s ability to  
21 continue to do business, the degree of culpabil-  
22 ity, and the length of any delay in undertaking  
23 efforts to comply; and

24 “(C) such other matters as justice may re-  
25 quire.

1           ~~“(3) CIVIL ACTION.—The Attorney General~~  
 2           may file a civil action in the appropriate United  
 3           States district court to collect, and the United  
 4           States district courts shall have jurisdiction to im-  
 5           pose, such fines.

6   **~~“§ 2608. Reimbursement of telecommunications car-~~**  
 7                                   **~~riers~~**

8           ~~“(a) IN GENERAL.—The Attorney General shall, sub-~~  
 9           ject to the availability of appropriations, reimburse tele-  
 10          communications carriers for all reasonable costs directly  
 11          associated with—

12                 ~~“(1) the modifications performed by carriers~~  
 13                 prior to the effective date of section 2602 or prior  
 14                 to the expiration of any extension granted under sec-  
 15                 tion 2606(c) to establish the capabilities necessary  
 16                 to comply with section 2602;

17                 ~~“(2) meeting the maximum capacity require-~~  
 18                 ments set forth in the notice under section  
 19                 2603(a)(1)(A); and

20                 ~~“(3) expanding existing facilities to accommo-~~  
 21                 date simultaneously the number of interceptions, pen  
 22                 registers and trap and trace devices for which notice  
 23                 has been provided under section 2603(a)(1)(B).

24           ~~“(b) PROCEDURES AND REGULATIONS.—Notwith-~~  
 25          standing any other law, the Attorney General may estab-

lish any procedures and regulations deemed necessary to  
 effectuate timely and cost-efficient reimbursement to tele-  
 communications carriers for reimbursable costs incurred  
 under this chapter, under chapters 119 and 121, and  
 under the Foreign Intelligence Surveillance Act of 1978  
 (50 U.S.C. 1801 et seq.).

“(c) DISPUTE RESOLUTION.—If there is a dispute  
 between the Attorney General and a telecommunications  
 carrier regarding the amount of reasonable costs to be re-  
 imbursed under subsection (b), the dispute shall be re-  
 solved and the amount determined in a proceeding initi-  
 ated at the Commission under section 2606(b) or by the  
 court from which an enforcement order is sought under  
 section 2607.

“(d) LACK OF APPROPRIATED FUNDS.—The lack of  
 appropriated funds sufficient to reimburse telecommuni-  
 cations carriers for modifications under subsection (a)  
 shall be considered by the Commission or a court in deter-  
 mining whether compliance is reasonable under section  
 2607(c).”.

(b) TECHNICAL AMENDMENT.—The part analysis for  
 part I of title 18, United States Code, is amended by in-  
 serting after the item relating to chapter 119 the following  
 new item:

**“120. Telecommunications carrier assistance to the Gov-  
 ernment ..... 2601”.**

1 **SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to carry out  
3 section 2608 of title 18, United States Code, as added by  
4 section 1—

5 (1) a total of \$500,000,000 for fiscal years  
6 1995, 1996, 1997, and 1998; and

7 (2) such sums as are necessary for each fiscal  
8 year thereafter.

9 **SEC. 3. EFFECTIVE DATE.**

10 (a) ~~IN GENERAL.~~—Except as provided in paragraph  
11 ~~(2)~~, chapter 120 of title 18, United States Code, as added  
12 by section 1, shall take effect on the date of enactment  
13 of this Act.

14 ~~(b) ASSISTANCE CAPABILITY AND SYSTEMS SECU-~~  
15 ~~RITY AND INTEGRITY REQUIREMENTS.~~—Sections 2602  
16 and 2604 of title 18, United States Code, as added by  
17 section 1, shall take effect on the date that is 4 years after  
18 the date of enactment of this Act.

19 **SEC. 4. REPORTS.**

20 ~~(a) REPORTS BY THE ATTORNEY GENERAL.~~—

21 (1) ~~IN GENERAL.~~—On or before November 30,  
22 1995, and on or before November 30 of each year  
23 for 5 years thereafter, the Attorney General shall  
24 submit to the Congress a report on the amounts  
25 paid during the preceding fiscal year in reimburse-  
26 ment to telecommunications carriers under section

1       2608 of title 18, United States Code, as added by  
2       section 1.

3       ~~(2) CONTENTS.~~—A report under paragraph ~~(1)~~  
4       shall include—

5               (A) a detailed accounting of the amounts  
6               paid to each carrier and the technology, feature  
7               or service for which the amounts were paid; and

8               (B) projections of the amounts expected to  
9               be paid in the current fiscal year, the carriers  
10              to which reimbursement is expected to be paid,  
11              and the technologies, services, or features for  
12              which reimbursement is expected to be paid.

13      ~~(b) REPORTS BY THE COMPTROLLER GENERAL.~~—

14              (1) IN GENERAL.—On or before April 1, 1996,  
15              and April 1, 1998, the Comptroller General of the  
16              United States, after consultation with the Attorney  
17              General and the telecommunications industry, shall  
18              submit to the Congress a report reflecting its audit  
19              of the sums paid by the Attorney General to carriers  
20              in reimbursement.

21              ~~(2) CONTENTS.~~—A report under paragraph ~~(1)~~  
22              shall include the findings and conclusions of the  
23              Comptroller General on the costs to be incurred  
24              after the compliance date, including projections of  
25              the amounts expected to be incurred and the tech-



1 nologies, services, or features for which expenses are  
 2 expected to be incurred.

3 **SEC. 5. CORDLESS TELEPHONES.**

4 (a) DEFINITIONS.—Section 2510 of title 18, United  
 5 States Code, is amended—

6 (1) in paragraph (1) by striking “but such term  
 7 does not include” and all that follows through “base  
 8 unit”; and

9 (2) in paragraph (12) by striking subparagraph  
 10 (A) and redesignating subparagraphs (B), (C), and  
 11 (D) as subparagraphs (A), (B), and (C), respec-  
 12 tively.

13 (b) PENALTY.—Section 2511 of title 18, United  
 14 States Code, is amended—

15 (1) in subsection (4)(b)(i) by inserting “a  
 16 cordless telephone communication that is transmit-  
 17 ted between the cordless telephone handset and the  
 18 base unit,” after “cellular telephone communica-  
 19 tion,”; and

20 (2) in subsection (4)(b)(ii) by inserting “a  
 21 cordless telephone communication that is transmit-  
 22 ted between the cordless telephone handset and the  
 23 base unit,” after “cellular telephone communica-  
 24 tion,”.

1 **SEC. 6. RADIO-BASED DATA COMMUNICATIONS.**

2 Section 2510(16) of title 18, United States Code, is  
3 amended—

4 (1) by striking “or” at the end of subparagraph  
5 (D);

6 (2) by inserting “or” at the end of subpara-  
7 graph (E); and

8 (3) by inserting after subparagraph (E) the fol-  
9 lowing new subparagraph:

10 “(F) an electronic communication;”

11 **SEC. 7. PENALTIES FOR MONITORING RADIO COMMUNICA-**  
12 **TIONS THAT ARE TRANSMITTED USING MOD-**  
13 **ULATION TECHNIQUES WITH NONPUBLIC PA-**  
14 **RAMETERS.**

15 Section 2511(4)(b) of title 18, United States Code,  
16 is amended by striking “or encrypted, then” and inserting  
17 “, encrypted, or transmitted using modulation techniques  
18 the essential parameters of which have been withheld from  
19 the public with the intention of preserving the privacy of  
20 such communication”.

21 **SEC. 8. TECHNICAL CORRECTION.**

22 Section 2511(2)(a)(i) of title 18, United States Code,  
23 is amended by striking “used in the transmission of a wire  
24 communication” and inserting “used in the transmission  
25 of a wire or electronic communication”.

1 **SEC. 9. FRAUDULENT ALTERATION OF COMMERCIAL MO-**  
 2 **BILE RADIO INSTRUMENTS.**

3 (a) OFFENSE.—Section 1029(a) of title 18, United  
 4 States Code, is amended—

5 (1) by striking “or” at the end of paragraph  
 6 (3); and

7 (2) by inserting after paragraph (4) the follow-  
 8 ing new paragraphs:

9 “(5) knowingly and with intent to defraud uses,  
 10 produces, traffics in, has control or custody of, or  
 11 possesses a telecommunications instrument that has  
 12 been modified or altered to obtain unauthorized use  
 13 of telecommunications services; or

14 “(6) knowingly and with intent to defraud uses,  
 15 produces, traffics in, has control or custody of, or  
 16 possesses—

17 “(A) a scanning receiver; or

18 “(B) hardware or software used for alter-  
 19 ing or modifying telecommunications instru-  
 20 ments to obtain unauthorized access to tele-  
 21 communications services.”

22 (b) PENALTY.—Section 1029(c)(2) of title 18, United  
 23 States Code, is amended by striking “(a)(1) or (a)(4)” and  
 24 inserting “(a) (1), (4), (5), or (6)”.

25 (c) DEFINITIONS.—Section 1029(e) of title 18, Unit-  
 26 ed States Code, is amended—

1           (1) in paragraph (1) by inserting “electronic se-  
 2       rial number, mobile identification number, personal  
 3       identification number, or other telecommunications  
 4       service, equipment, or instrument identifier,” after  
 5       “account number,”;

6           (2) by striking “and” at the end of paragraph  
 7       (5);

8           (3) by striking the period at the end of para-  
 9       graph (6) and inserting “; and”; and

10          (4) by adding at the end the following new  
 11       paragraph:

12           “(7) the term ‘scanning receiver’ means a de-  
 13       vice or apparatus that can be used to intercept a  
 14       wire or electronic communication in violation of  
 15       chapter 119.”.

16 **SEC. 10. TRANSACTIONAL DATA.**

17       (a) DISCLOSURE OF RECORDS.—Section 2703 of title  
 18       18, United States Code, is amended—

19           (1) in subsection (c)—

20               (A) in subparagraph (B)—

21                   (i) by striking clause (i); and

22                   (ii) by redesignating clauses (ii), (iii),

23                   (iv) as clauses (i), (ii), and (iii), respec-  
 24                   tively; and

1           (B) by adding at the end the following new  
2           subparagraph:

3           “(C) A provider of electronic communica-  
4           tion service or remote computing service shall  
5           disclose to a governmental entity the name, bill-  
6           ing address, and length of service of a sub-  
7           scriber to or customer of such service and the  
8           types of services the subscriber or customer uti-  
9           lized, when the governmental entity uses an ad-  
10          ministrative subpoena authorized by a Federal  
11          or State statute or a Federal or State grand  
12          jury or trial subpoena or any means available  
13          under subparagraph (B).”; and

14          (2) by amending the first sentence of subsection  
15          (d) to read as follows: “A court order for disclosure  
16          under subsection (b) or (c) may be issued by any  
17          court that is a court of competent jurisdiction de-  
18          scribed in section 3126(2)(A) and shall issue only if  
19          the governmental entity offers specific and  
20          articulable facts showing that there are reasonable  
21          grounds to believe that the contents of a wire or  
22          electronic communication, or the records or other in-  
23          formation sought, are relevant and material to an  
24          ongoing criminal investigation.”.

1       ~~(b) PEN REGISTERS AND TRAP AND TRACE DE-~~  
 2       ~~VICES.—Section 3121 of title 18, United States Code, is~~  
 3       ~~amended—~~

4               ~~(1) by redesignating subsection (c) as sub-~~  
 5       ~~section (d); and~~

6               ~~(2) by inserting after subsection (b) the follow-~~  
 7       ~~ing new subsection:~~

8       ~~“(c) LIMITATION.—A government agency authorized~~  
 9       ~~to install and use a pen register under this chapter or~~  
 10       ~~under State law, shall use technology reasonably available~~  
 11       ~~to it that restricts the recording or decoding of electronic~~  
 12       ~~or other impulses to the dialing and signalling information~~  
 13       ~~utilized in call processing.”.~~

14       ~~**SECTION 1. INTERCEPTION OF DIGITAL AND OTHER COM-**~~  
 15       ~~**MUNICATIONS.**~~

16       ~~(a) IN GENERAL.—Part I of title 18, United States~~  
 17       ~~Code, is amended by inserting after chapter 119 the follow-~~  
 18       ~~ing new chapter:~~

19       ~~**“CHAPTER     120—TELECOMMUNICATIONS**~~  
 20       ~~**CARRIER ASSISTANCE TO THE GOV-**~~  
 21       ~~**ERNMENT**~~

*“Sec.*

*“2601. Definitions.*

*“2602. Assistance capability requirements.*

*“2603. Notices of capacity requirements.*

*“2604. Systems security and integrity.*

*“2605. Cooperation of equipment manufacturers and providers of telecommuni-*  
*cations support services.*

*“2606. Technical requirements and standards; extension of compliance date.*

*“2607. Enforcement orders.*

*“2608. Payment of costs of telecommunications carriers.*

1 **“§ 2601. Definitions**

2 “(a) *DEFINITIONS.—In this chapter—*

3 “*the terms defined in section 2510 have, respec-*  
4 *tively, the meanings stated in that section.*

5 “‘*call-identifying information*’—

6 “(A) *means all dialing or signalling infor-*  
7 *mation that identifies the origin, direction, des-*  
8 *tination, or termination of each communication*  
9 *generated or received by the subscriber equip-*  
10 *ment, facility, or service of a telecommunications*  
11 *carrier that is the subject of a court order or*  
12 *lawful authorization; but*

13 “(B) *does not include any information that*  
14 *may disclose the physical location of the sub-*  
15 *scriber (except to the extent that the location*  
16 *may be determined from the telephone number).*

17 “‘*Commission*’ *means the Federal Communica-*  
18 *tions Commission.*

19 “‘*government*’ *means the government of the*  
20 *United States and any agency or instrumentality*  
21 *thereof, the District of Columbia, any commonwealth,*  
22 *territory, or possession of the United States, and any*  
23 *State or political subdivision thereof authorized by*  
24 *law to conduct electronic surveillance.*

25 “‘*information services*’—

1           “(A) means the offering of a capability for  
2           generating, acquiring, storing, transforming,  
3           processing, retrieving, utilizing, or making avail-  
4           able information via telecommunications; and

5           “(B) includes electronic publishing and elec-  
6           tronic messaging services; but

7           “(C) does not include any capability for a  
8           telecommunications carrier’s internal manage-  
9           ment, control, or operation of its telecommuni-  
10          cations network.

11          “telecommunications support services” means a  
12          product, software, or service used by a telecommuni-  
13          cations carrier for the internal signaling or switching  
14          functions of its telecommunications network.

15          “‘telecommunications carrier’—

16               “(A) means a person or entity engaged in  
17               the transmission or switching of wire or elec-  
18               tronic communications as a common carrier for  
19               hire (within the meaning of section 3(h) of the  
20               Communications Act of 1934 (47 U.S.C.  
21               153(h)));

22               “(B) includes—

23                   “(i) a person or entity engaged in pro-  
24                   viding commercial mobile service (as de-



1           *defined in section 332(d) of the Communica-*  
 2           *tions Act of 1934 (47 U.S.C. 332(d)); or*

3           “(ii) a person or entity engaged in  
 4           *providing wire or electronic communication*  
 5           *switching or transmission service to the ex-*  
 6           *tent that the Commission finds that such*  
 7           *service is a replacement for a substantial*  
 8           *portion of the local telephone exchange serv-*  
 9           *ice and that it is in the public interest to*  
 10           *deem such a person or entity to be a tele-*  
 11           *communications carrier for purposes of this*  
 12           *chapter; but*

13           “(C) does not include persons or entities in-  
 14           *sofar as they are engaged in providing informa-*  
 15           *tion services.*

16   **“§ 2602. Assistance capability requirements**

17           “(a) *CAPABILITY REQUIREMENTS.*—*Except as pro-*  
 18           *vided in subsections (b), (c), and (d) of this section, and*  
 19           *subject to section 2607(c), a telecommunications carrier*  
 20           *shall ensure that its services or facilities that provide a cus-*  
 21           *tomers or subscribers with the ability to originate, terminate,*  
 22           *or direct communications are capable of—*

23           “(1) *expeditiously isolating and enabling the*  
 24           *government to intercept, to the exclusion of any other*  
 25           *communications, all wire and electronic communica-*

1        *tions carried by the carrier within a service area to*  
2        *or from equipment, facilities, or services of a sub-*  
3        *scriber of such carrier concurrently with their trans-*  
4        *mission to or from the subscriber's service, facility, or*  
5        *equipment or at such later time as may be acceptable*  
6        *to the government;*

7            *“(2) expeditiously isolating and enabling the*  
8        *government to access call-identifying information that*  
9        *is reasonably available to the carrier—*

10            *“(A) before, during, or immediately after*  
11        *the transmission of a wire or electronic commu-*  
12        *nication (or at such later time as may be accept-*  
13        *able to the government); and*

14            *“(B) in a manner that allows it to be asso-*  
15        *ciated with the communication to which it per-*  
16        *tains,*

17        *except that, with regard to information acquired sole-*  
18        *ly pursuant to the authority for pen registers and*  
19        *trap and trace devices (as defined in section 3127),*  
20        *such call-identifying information shall not include*  
21        *any information that may disclose the physical loca-*  
22        *tion of the subscriber (except to the extent that the lo-*  
23        *cation may be determined from the telephone num-*  
24        *ber);*

1           “(3) *delivering intercepted communications and*  
 2           *call-identifying information to the government in a*  
 3           *format such that they may be transmitted by means*  
 4           *of facilities or services procured by the government to*  
 5           *a location other than the premises of the carrier; and*

6           “(4) *facilitating authorized communications*  
 7           *interceptions and access to call-identifying informa-*  
 8           *tion unobtrusively and with a minimum of inter-*  
 9           *ference with any subscriber’s telecommunications serv-*  
 10          *ice and in a manner that protects—*

11           “(A) *the privacy and security of commu-*  
 12          *nications and call-identifying information not*  
 13          *authorized to be intercepted; and*

14           “(B) *information regarding the govern-*  
 15          *ment’s interception of communications and ac-*  
 16          *cess to call-identifying information.*

17          “(b) *LIMITATIONS.—*

18           “(1) *DESIGN OF FEATURES AND SYSTEMS CON-*  
 19          *FIGURATIONS.—This chapter does not authorize any*  
 20          *law enforcement agency or officer—*

21           “(A) *to require any specific design of fea-*  
 22          *tures or system configurations to be adopted by*  
 23          *providers of wire or electronic communication*  
 24          *service, manufacturers of telecommunications*

1       *equipment, or providers of telecommunications*  
 2       *support services; or*

3               *“(B) to prohibit the adoption of any feature*  
 4       *or service by providers of wire or electronic com-*  
 5       *munication service, manufacturers of tele-*  
 6       *communications equipment, or providers of tele-*  
 7       *communications support services.*

8               *“(2) INFORMATION SERVICES; PRIVATE NET-*  
 9       *WORKS AND INTERCONNECTION SERVICES AND FACILI-*  
 10       *TIES.—The requirements of subsection (a) do not*  
 11       *apply to—*

12               *“(A) information services; or*

13               *“(B) services or facilities that support the*  
 14       *transport or switching of communications for*  
 15       *private networks or for the sole purpose of inter-*  
 16       *connecting telecommunications carriers.*

17               *“(3) ENCRYPTION.—A telecommunications car-*  
 18       *rier shall not be responsible for decrypting, or ensur-*  
 19       *ing the government’s ability to decrypt, any commu-*  
 20       *nication encrypted by a subscriber or customer, unless*  
 21       *the encryption was provided by the carrier and the*  
 22       *carrier possesses the information necessary to decrypt*  
 23       *the communication.*

24               *“(c) EMERGENCY OR EXIGENT CIRCUMSTANCES.—In*  
 25       *emergency or exigent circumstances (including those de-*

1 *scribed in sections 2518 (7) or (11)(b) and 3125 of this title*  
 2 *and section 1805(e) of title 50), a carrier at its discretion*  
 3 *may fulfill its responsibilities under subsection (a)(3) by*  
 4 *allowing monitoring at its premises if that is the only*  
 5 *means of accomplishing the interception or access.*

6       “(d) *MOBILE SERVICE ASSISTANCE REQUIRE-*  
 7 *MENTS.—A telecommunications carrier offering a feature or*  
 8 *service that allows subscribers to redirect, hand off, or as-*  
 9 *sign their wire or electronic communications to another*  
 10 *service area or another service provider or to utilize facili-*  
 11 *ties in another service area or of another service provider*  
 12 *shall ensure that, when the carrier that had been providing*  
 13 *assistance for the interception of wire or electronic commu-*  
 14 *nications or access to call-identifying information pursuant*  
 15 *to a court order or lawful authorization no longer has access*  
 16 *to the content of such communications or call-identifying*  
 17 *information within the service area in which interception*  
 18 *has been occurring as a result of the subscriber’s use of such*  
 19 *a feature or service, information is made available to the*  
 20 *government (before, during, or immediately after the trans-*  
 21 *fer of such communications) identifying the provider of*  
 22 *wire or electronic communication service that has acquired*  
 23 *access to the communications.*

1 **“§ 2603. Notices of capacity requirements**

2 “(a) *NOTICES OF MAXIMUM AND ACTUAL CAPACITY*  
3 *REQUIREMENTS.*—

4 “(1) *IN GENERAL.*—Not later than 1 year after  
5 the date of enactment of this chapter, after consulting  
6 with State and local law enforcement agencies, tele-  
7 communications carriers, providers of telecommuni-  
8 cations support services, and manufacturers of tele-  
9 communications equipment and after notice and com-  
10 ment, the Attorney General shall publish in the Fed-  
11 eral Register and provide to appropriate tele-  
12 communications carrier associations, standard-setting  
13 organizations, and for a—

14 “(A) notice of the maximum capacity re-  
15 quired to accommodate all of the communication  
16 interceptions, pen registers, and trap and trace  
17 devices that the Attorney General estimates that  
18 government agencies authorized to conduct elec-  
19 tronic surveillance may conduct and use simul-  
20 taneously; and

21 “(B) notice of the number of communication  
22 interceptions, pen registers, and trap and trace  
23 devices, representing a portion of the maximum  
24 capacity set forth under subparagraph (A), that  
25 the Attorney General estimates that government  
26 agencies authorized to conduct electronic surveil-

1        *lance may conduct and use simultaneously after*  
 2        *the date that is 4 years after the date of enact-*  
 3        *ment of this chapter.*

4        “(2) *BASIS OF NOTICES.*—*The notices issued*  
 5        *under paragraph (1) may be based upon the type of*  
 6        *equipment, type of service, number of subscribers, geo-*  
 7        *graphic location, or other measure.*

8        “(b) *COMPLIANCE WITH CAPACITY NOTICES.*—

9                “(1) *INITIAL CAPACITY.*—*Within 3 years after*  
 10        *the publication by the Attorney General of a notice of*  
 11        *capacity requirements or within 4 years after the date*  
 12        *of enactment of this chapter, whichever is longer, a*  
 13        *telecommunications carrier shall ensure that its sys-*  
 14        *tems are capable of—*

15                “(A) *expanding to the maximum capacity*  
 16        *set forth in the notice under subsection (a)(1)(A);*  
 17        *and*

18                “(B) *accommodating simultaneously the*  
 19        *number of interceptions, pen registers, and trap*  
 20        *and trace devices set forth in the notice under*  
 21        *subsection (a)(1)(B).*

22        “(2) *EXPANSION TO MAXIMUM CAPACITY.*—*After*  
 23        *the date described in paragraph (1), a telecommuni-*  
 24        *cations carrier shall ensure that it can accommodate*  
 25        *expeditiously any increase in the number of commu-*

1      *nication interceptions, pen registers, and trap and*  
 2      *trace devices that authorized agencies may seek to*  
 3      *conduct and use, up to the maximum capacity re-*  
 4      *quirement set forth in the notice under subsection*  
 5      *(a)(1)(A).*

6      “(c) *NOTICES OF INCREASED MAXIMUM CAPACITY RE-*  
 7      *QUIREMENTS.*—

8           “(1) *The Attorney General shall periodically*  
 9      *provide to telecommunications carriers written notice*  
 10     *of any necessary increases in the maximum capacity*  
 11     *requirement set forth in the notice under subsection*  
 12     *(a)(1)(A).*

13          “(2) *Within 3 years after receiving written no-*  
 14     *tice of increased capacity requirements under para-*  
 15     *graph (1), or within such longer time period as the*  
 16     *Attorney General may specify, a telecommunications*  
 17     *carrier shall ensure that its systems are capable of ex-*  
 18     *panding to the increased maximum capacity set forth*  
 19     *in the notice.*

20     **“§ 2604. Systems security and integrity**

21          “A telecommunications carrier shall ensure that any  
 22     *court ordered or lawfully authorized interception of commu-*  
 23     *nications or access to call-identifying information effected*  
 24     *within its switching premises can be activated only with*



1 *the affirmative intervention of an individual officer or em-*  
 2 *ployee of the carrier.*

3 **“§ 2605. Cooperation of equipment manufacturers and**  
 4 **providers of telecommunications support**  
 5 **services**

6 “(a) *CONSULTATION.*—A telecommunications carrier  
 7 shall consult, as necessary, in a timely fashion with manu-  
 8 facturers of its telecommunications transmission and  
 9 switching equipment and its providers of telecommuni-  
 10 cations support services for the purpose of identifying any  
 11 service or equipment, including hardware and software,  
 12 that may require modification so as to permit compliance  
 13 with this chapter.

14 “(b) *MODIFICATION OF EQUIPMENT AND SERVICES.*—  
 15 Subject to section 2607(c), a manufacturer of telecommuni-  
 16 cations transmission or switching equipment and a pro-  
 17 vider of telecommunications support services shall, on a rea-  
 18 sonably timely basis and at a reasonable charge, make  
 19 available to the telecommunications carriers using its  
 20 equipment or services such modifications as are necessary  
 21 to permit such carriers to comply with this chapter.

22 **“§ 2606. Technical requirements and standards; exten-**  
 23 **sion of compliance date**

24 “(a) *SAFE HARBOR.*—

1           “(1) *CONSULTATION.*—To ensure the efficient  
2           and industry-wide implementation of the assistance  
3           capability requirements under section 2602, the Attor-  
4           ney General, in coordination with other Federal,  
5           State, and local law enforcement agencies, shall con-  
6           sult with appropriate associations and standard-set-  
7           ting organizations of the telecommunications industry  
8           and with representatives of users of telecommuni-  
9           cations services and facilities.

10           “(2) *COMPLIANCE UNDER ACCEPTED STAND-*  
11           *ARDS.*—A telecommunications carrier shall be found  
12           to be in compliance with the assistance capability re-  
13           quirements under section 2602, and a manufacturer  
14           of telecommunications transmission or switching  
15           equipment or a provider of telecommunications sup-  
16           port services shall be found to be in compliance with  
17           section 2605, if the carrier, manufacturer, or support  
18           service provider is in compliance with publicly avail-  
19           able technical requirements or standards adopted by  
20           an industry association or standard-setting organiza-  
21           tion or by the Commission under subsection (b) to  
22           meet the requirements of section 2602.

23           “(3) *ABSENCE OF STANDARDS.*—The absence of  
24           technical requirements or standards for implementing

1     *the assistance capability requirements of section 2602*  
2     *shall not—*

3             *“(A) preclude a carrier, manufacturer, or*  
4             *services provider from deploying a technology or*  
5             *service; or*

6             *“(B) relieve a carrier, manufacturer, or*  
7             *service provider of the obligations imposed by*  
8             *section 2602 or 2605, as applicable.*

9     *“(b) FCC AUTHORITY.—*

10            *“(1) IN GENERAL.—If industry associations or*  
11            *standard-setting organizations fail to issue technical*  
12            *requirements or standards or if a government agency*  
13            *or any other person believes that such requirements or*  
14            *standards are deficient, the agency or person may pe-*  
15            *tition the Commission to establish, by notice and*  
16            *comment rulemaking or such other proceedings as the*  
17            *Commission may be authorized to conduct, technical*  
18            *requirements or standards that—*

19            *“(A) meet the assistance capability require-*  
20            *ments of section 2602;*

21            *“(B) protect the privacy and security of*  
22            *communications not authorized to be intercepted;*  
23            *and*

1           “(C) serve the policy of the United States to  
2           encourage the provision of new technologies and  
3           services to the public.

4           “(2) *TRANSITION PERIOD.*—If an industry tech-  
5           nical requirement or standard is set aside or sup-  
6           planted as a result of Commission action under this  
7           section, the Commission, after consultation with the  
8           Attorney General, shall establish a reasonable time  
9           and conditions for compliance with and the transi-  
10          tion to any new standard, including defining the obli-  
11          gations of telecommunications carriers under section  
12          2602 during any transition period.

13          “(c) *EXTENSION OF COMPLIANCE DATE FOR FEA-*  
14          *TURES AND SERVICES.*—

15               “(1) *PETITION.*—A telecommunications carrier  
16               proposing to deploy, or having deployed, a feature or  
17               service within 4 years after the date of enactment of  
18               this chapter may petition the Commission for 1 or  
19               more extensions of the deadline for complying with  
20               the assistance capability requirements under section  
21               2602.

22               “(2) *GROUND FOR EXTENSION.*—The Commis-  
23               sion may, after affording a full opportunity for hear-  
24               ing and after consultation with the Attorney General,  
25               grant an extension under this paragraph, if the Com-

1     *mission determines that compliance with the assist-*  
 2     *ance capability requirements under section 2602 is*  
 3     *not reasonably achievable through application of tech-*  
 4     *nology available within the compliance period.*

5             “(3) *LENGTH OF EXTENSION.*—An extension  
 6     under this paragraph shall extend for no longer than  
 7     the earlier of—

8             “(A) the date determined by the Commis-  
 9     sion as necessary for the carrier to comply with  
 10    the assistance capability requirements under sec-  
 11    tion 2602; or

12            “(B) the date that is 2 years after the date  
 13    on which the extension is granted.

14            “(4) *APPLICABILITY OF EXTENSION.*—An exten-  
 15    sion under this subsection shall apply to only that  
 16    part of the carrier’s business on which the new feature  
 17    or service is used.

18    **“§ 2607. Enforcement orders**

19            “(a) *ENFORCEMENT BY COURT ISSUING SURVEIL-*  
 20    *LANCE ORDER.*—If a court authorizing an interception  
 21    under chapter 119, a State statute, or the Foreign Intel-  
 22    ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)  
 23    or authorizing use of a pen register or a trap and trace  
 24    device under chapter 206 or a State statute finds that a  
 25    telecommunications carrier has failed to comply with the

1 *requirements in this chapter, the court may direct that the*  
 2 *carrier comply forthwith and may direct that a provider*  
 3 *of support services to the carrier or the manufacturer of*  
 4 *the carrier's transmission or switching equipment furnish*  
 5 *forthwith modifications necessary for the carrier to comply.*

6       “(b) *ENFORCEMENT UPON APPLICATION BY ATTORNEY*  
 7 *GENERAL.*—*The Attorney General may apply to the appro-*  
 8 *priate United States district court for, and the United*  
 9 *States district courts shall have jurisdiction to issue, an*  
 10 *order directing that a telecommunications carrier, a manu-*  
 11 *facturer of telecommunications transmission or switching*  
 12 *equipment, or a provider of telecommunications support*  
 13 *services comply with this chapter.*

14       “(c) *GROUND FOR ISSUANCE.*—*A court shall issue an*  
 15 *order under subsection (a) or (b) only if the court finds*  
 16 *that—*

17               “(1) *alternative technologies or capabilities or*  
 18 *the facilities of another carrier are not reasonably*  
 19 *available to law enforcement for implementing the*  
 20 *interception of communications or access to call-iden-*  
 21 *tifying information; and*

22               “(2) *compliance with the requirements of this*  
 23 *chapter is reasonably achievable through the applica-*  
 24 *tion of available technology to the feature or service*

1       *at issue or would have been reasonably achievable if*  
2       *timely action had been taken.*

3       “(d) *TIME FOR COMPLIANCE.*—Upon issuance of an  
4       enforcement order under this section, the court shall specify  
5       a reasonable time and conditions for complying with its  
6       order, considering the good faith efforts to comply in a time-  
7       ly manner, any effect on the carrier’s, manufacturer’s, or  
8       service provider’s ability to continue to do business, the de-  
9       gree of culpability or delay in undertaking efforts to com-  
10      ply, and such other matters as justice may require.

11      “(e) *LIMITATION.*—An order under this section may  
12      not require a telecommunications carrier to meet the gov-  
13      ernment’s demand for interception of communications and  
14      acquisition of call-identifying information to any extent in  
15      excess of the capacity for which notice has been provided  
16      under section 2603.

17      “(f) *CIVIL PENALTY.*—

18           “(1) *IN GENERAL.*—A court issuing an order  
19      under this section against a telecommunications car-  
20      rier, a manufacturer of telecommunications trans-  
21      mission or switching equipment, or a provider of tele-  
22      communications support services may impose a civil  
23      penalty of up to \$10,000 per day for each day in vio-  
24      lation after the issuance of the order or after such fu-  
25      ture date as the court may specify.

1           “(2) *CONSIDERATIONS.*—In determining whether  
2           to impose a fine and in determining its amount, the  
3           court shall take into account—

4                   “(A) the nature, circumstances, and extent  
5                   of the violation;

6                   “(B) the violator’s ability to pay, the viola-  
7                   tor’s good faith efforts to comply in a timely  
8                   manner, any effect on the violator’s ability to  
9                   continue to do business, the degree of culpability,  
10                  and the length of any delay in undertaking ef-  
11                  forts to comply; and

12                  “(C) such other matters as justice may re-  
13                  quire.

14           “(3) *CIVIL ACTION.*—The Attorney General may  
15           file a civil action in the appropriate United States  
16           district court to collect, and the United States district  
17           courts shall have jurisdiction to impose, such fines.

18   **“§ 2608. Payment of costs of telecommunications car-**  
19                   **riers**

20           “(a) *EQUIPMENT, FEATURES, AND SERVICES DE-*  
21           *PLOYED BEFORE DATE OF ENACTMENT; CAPACITY*  
22           *COSTS.*—The Attorney General shall, subject to the avail-  
23           ability of appropriations, pay telecommunications carriers  
24           for all reasonable costs directly associated with—



1           “(1) the modifications performed by carriers  
2           prior to the effective date of section 2602 or prior to  
3           the expiration of any extension granted under section  
4           2606(c) to establish, with respect to equipment, fea-  
5           tures, and services deployed before the date of enact-  
6           ment of this chapter, the capabilities necessary to  
7           comply with section 2602;

8           “(2) meeting the maximum capacity require-  
9           ments set forth in the notice under section  
10          2603(a)(1)(A); and

11          “(3) expanding existing facilities to accommo-  
12          date simultaneously the number of interceptions, pen  
13          registers and trap and trace devices for which notice  
14          has been provided under section 2603(a)(1)(B).

15          “(b) EQUIPMENT, FEATURES, AND SERVICES DE-  
16          PLOYED ON OR AFTER DATE OF ENACTMENT.—

17               “(1) IN GENERAL.—If compliance with the as-  
18               sistance capability requirements of section 2602 is not  
19               reasonably achievable with respect to equipment, fea-  
20               tures, or services deployed on or after the date of en-  
21               actment of this chapter, the Attorney General, on  
22               application of a telecommunications carrier, may pay  
23               the telecommunications carrier reasonable costs di-  
24               rectly associated with achieving compliance.

1           “(2) *CONSIDERATION.*—In determining whether  
2           compliance with the assistance capability require-  
3           ments of section 2602 is reasonably achievable with  
4           respect to any equipment, feature, or service deployed  
5           the date of enactment of this chapter, consideration  
6           shall be given to the time when the equipment, fea-  
7           ture, or service was deployed.

8           “(c) *ALLOCATION OF FUNDS FOR PAYMENT.*—The At-  
9           torney General shall allocate funds appropriated to carry  
10          out this chapter in accordance with law enforcement prior-  
11          ities determined by the Attorney General.

12          “(d) *FAILURE TO MAKE PAYMENT WITH RESPECT TO*  
13          *EQUIPMENT, FEATURES, AND SERVICES DEPLOYED BE-*  
14          *FORE DATE OF ENACTMENT.*—

15               “(1) *CONSIDERED TO BE IN COMPLIANCE.*—Un-  
16          less the Attorney General has agreed to pay the tele-  
17          communications carrier for all reasonable costs di-  
18          rectly associated with modifications necessary to  
19          bring the equipment, feature, or service into actual  
20          compliance with those requirements, provided the car-  
21          rier has requested payment in accordance with proce-  
22          dures promulgated pursuant to subsection (e), any  
23          equipment, feature, or service of a telecommunications  
24          carrier deployed before the date of enactment of this  
25          chapter shall be considered to be in compliance with

1        *the assistance capability requirements of section 2602*  
2        *unless the equipment, feature, or service is replaced or*  
3        *significantly upgraded or otherwise undergoes major*  
4        *modification.*

5            “(2) *LIMITATION ON ORDER.*—An order under  
6        *section 2607 shall not require a telecommunications*  
7        *carrier to modify, for the purpose of complying with*  
8        *the assistance capability requirements of section 2602,*  
9        *any equipment, feature, or service deployed before the*  
10       *date of enactment of this chapter unless the Attorney*  
11       *General has agreed to pay the telecommunications*  
12       *carrier for all reasonable costs directly associated*  
13       *with modifications necessary to bring the equipment,*  
14       *feature, or service into actual compliance with those*  
15       *requirements.*

16           “(e) *PROCEDURES AND REGULATIONS.*—Notwith-  
17       *standing any other law, the Attorney General shall, after*  
18       *notice and comment, establish any procedures and regula-*  
19       *tions deemed necessary to effectuate timely and cost-efficient*  
20       *payment to telecommunications carriers for compensable*  
21       *costs incurred under this chapter, under chapters 119 and*  
22       *121, and under the Foreign Intelligence Surveillance Act*  
23       *of 1978 (50 U.S.C. 1801 et seq.).*

24           “(f) *DISPUTE RESOLUTION.*—If there is a dispute be-  
25       *tween the Attorney General and a telecommunications car-*

1 rier regarding the amount of reasonable costs to be paid  
 2 under subsection (a), the dispute shall be resolved and the  
 3 amount determined in a proceeding initiated at the Com-  
 4 mission or by the court from which an enforcement order  
 5 is sought under section 2607.”.

6 (b) *TECHNICAL AMENDMENT.*—The part analysis for  
 7 part I of title 18, United States Code, is amended by insert-  
 8 ing after the item relating to chapter 119 the following new  
 9 item:

**“120. Telecommunications carrier assistance to the Gov-  
 ernment ..... 2601”.**

10 **SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated to carry out  
 12 section 2608 of title 18, United States Code, as added by  
 13 section 1—

14 (1) a total of \$500,000,000 for fiscal years 1995,  
 15 1996, and 1997; and

16 (2) such sums as are necessary for each fiscal  
 17 year thereafter,

18 such sums to remain available until expended.

19 **SEC. 3. EFFECTIVE DATE.**

20 (a) *IN GENERAL.*—Except as provided in paragraph  
 21 (2), chapter 120 of title 18, United States Code, as added  
 22 by section 1, shall take effect on the date of enactment of  
 23 this Act.

1       (b) *ASSISTANCE CAPABILITY AND SYSTEMS SECURITY*  
 2 *AND INTEGRITY REQUIREMENTS.*—Sections 2602 and 2604  
 3 of title 18, United States Code, as added by section 1, shall  
 4 take effect on the date that is 4 years after the date of enact-  
 5 ment of this Act.

6 **SEC. 4. REPORTS.**

7       (a) *REPORTS BY THE ATTORNEY GENERAL.*—

8           (1) *IN GENERAL.*—On or before November 30,  
 9 1995, and on or before November 30 of each year for  
 10 5 years thereafter, the Attorney General shall submit  
 11 to Congress and make available to the public a report  
 12 on the amounts paid during the preceding fiscal year  
 13 in payment to telecommunications carriers under sec-  
 14 tion 2608 of title 18, United States Code, as added  
 15 by section 1.

16           (2) *CONTENTS.*—A report under paragraph (1)  
 17 shall include—

18               (A) a detailed accounting of the amounts  
 19 paid to each carrier and the technology, equip-  
 20 ment, feature or service for which the amounts  
 21 were paid; and

22               (B) projections of the amounts expected to  
 23 be paid in the current fiscal year, the carriers to  
 24 which payment is expected to be made, and the

1           technologies, equipment, features or services for  
2           which payment is expected to be made.

3           (b) *REPORTS BY THE COMPTROLLER GENERAL.*—

4           (1) *PAYMENTS FOR MODIFICATIONS.*—On or be-  
5           fore April 1, 1996, and April 1, 1998, the Comptroller  
6           General of the United States, after consultation with  
7           the Attorney General and the telecommunications in-  
8           dustry, shall submit to the Congress a report reflect-  
9           ing its analysis of the reasonableness and cost-effec-  
10          tiveness of the payments made by the Attorney Gen-  
11          eral to telecommunications carriers for modifications  
12          necessary to ensure compliance with chapter 120 of  
13          title 18, United States Code, as added by section 1.

14          (2) *COMPLIANCE COST ESTIMATES.*—A report  
15          under paragraph (1) shall include the findings and  
16          conclusions of the Comptroller General on the costs to  
17          be incurred after the compliance date, including pro-  
18          jections of the amounts expected to be incurred and  
19          the technologies, equipment, features or services for  
20          which expenses are expected to be incurred by tele-  
21          communications carriers to comply with the assist-  
22          ance capability requirements in the first 5 years after  
23          the effective date of section 2602.

1 **SEC. 5. CORDLESS TELEPHONES.**

2 (a) *DEFINITIONS.*—Section 2510 of title 18, United  
3 States Code, is amended—

4 (1) in paragraph (1) by striking “but such term  
5 does not include” and all that follows through “base  
6 unit”; and

7 (2) in paragraph (12) by striking subparagraph  
8 (A) and redesignating subparagraphs (B), (C), and  
9 (D) as subparagraphs (A), (B), and (C), respectively.

10 (b) *PENALTY.*—Section 2511 of title 18, United States  
11 Code, is amended—

12 (1) in subsection (4)(b)(i) by inserting “a  
13 cordless telephone communication that is transmitted  
14 between the cordless telephone handset and the base  
15 unit,” after “cellular telephone communication,”; and

16 (2) in subsection (4)(b)(ii) by inserting “a  
17 cordless telephone communication that is transmitted  
18 between the cordless telephone handset and the base  
19 unit,” after “cellular telephone communication,”.

20 **SEC. 6. RADIO-BASED DATA COMMUNICATIONS.**

21 Section 2510(16) of title 18, United States Code, is  
22 amended—

23 (1) by striking “or” at the end of subparagraph  
24 (D);

25 (2) by inserting “or” at the end of subparagraph  
26 (E); and

1           (3) by inserting after subparagraph (E) the fol-  
 2           lowing new subparagraph:

3                   “(F) an electronic communication;”

4   **SEC. 7. PENALTIES FOR MONITORING RADIO COMMUNICA-**  
 5                   **TIONS THAT ARE TRANSMITTED USING MOD-**  
 6                   **ULATION TECHNIQUES WITH NONPUBLIC PA-**  
 7                   **RAMETERS.**

8           Section 2511(4)(b) of title 18, United States Code, is  
 9   amended by striking “or encrypted, then” and inserting “,  
 10 encrypted, or transmitted using modulation techniques the  
 11 essential parameters of which have been withheld from the  
 12 public with the intention of preserving the privacy of such  
 13 communication”.

14 **SEC. 8. TECHNICAL CORRECTION.**

15          Section 2511(2)(a)(i) of title 18, United States Code,  
 16 is amended by striking “used in the transmission of a wire  
 17 communication” and inserting “used in the transmission  
 18 of a wire or electronic communication”.

19 **SEC. 9. FRAUDULENT ALTERATION OF COMMERCIAL MO-**  
 20                   **BILE RADIO INSTRUMENTS.**

21          (a) *OFFENSE.*—Section 1029(a) of title 18, United  
 22 States Code, is amended—

23                   (1) by striking “or” at the end of paragraph (3);  
 24                   and



1           (2) by inserting after paragraph (4) the follow-  
 2           ing new paragraphs:

3           “(5) knowingly and with intent to defraud uses,  
 4           produces, traffics in, has control or custody of, or pos-  
 5           sesses a telecommunications instrument that has been  
 6           modified or altered to obtain unauthorized use of tele-  
 7           communications services; or

8           “(6) knowingly and with intent to defraud uses,  
 9           produces, traffics in, has control or custody of, or pos-  
 10          sesses—

11                   “(A) a scanning receiver; or

12                   “(B) hardware or software used for altering  
 13                   or modifying telecommunications instruments to  
 14                   obtain unauthorized access to telecommuni-  
 15                   cations services,”.

16          (b) *PENALTY.*—Section 1029(c)(2) of title 18, United  
 17          States Code, is amended by striking “(a)(1) or (a)(4)” and  
 18          inserting “(a) (1), (4), (5), or (6)”.

19          (c) *DEFINITIONS.*—Section 1029(e) of title 18, United  
 20          States Code, is amended—

21                   (1) in paragraph (1) by inserting “electronic se-  
 22                   rial number, mobile identification number, personal  
 23                   identification number, or other telecommunications  
 24                   service, equipment, or instrument identifier,” after  
 25                   “account number,”;

1           (2) by striking “and” at the end of paragraph  
2           (5);

3           (3) by striking the period at the end of para-  
4           graph (6) and inserting “; and”; and

5           (4) by adding at the end the following new para-  
6           graph:

7           “(7) the term ‘scanning receiver’ means a device  
8           or apparatus that can be used to intercept a wire or  
9           electronic communication in violation of chapter  
10          119.”.

11   **SEC. 10. TRANSACTIONAL DATA.**

12          (a) *DISCLOSURE OF RECORDS*.—Section 2703 of title  
13   18, *United States Code*, is amended—

14          (1) in subsection (c)(1)—

15               (A) in subparagraph (B)—

16                     (i) by striking clause (i); and

17                     (ii) by redesignating clauses (ii), (iii),  
18                     and (iv) as clauses (i), (ii), and (iii), re-  
19                     spectively; and

20               (B) by adding at the end the following new  
21               subparagraph:

22                     “(C) A provider of electronic communica-  
23                     tion service or remote computing service shall  
24                     disclose to a governmental entity the name, ad-  
25                     dress, telephone toll billing records, and length of

1        *service of a subscriber to or customer of such*  
2        *service and the types of services the subscriber or*  
3        *customer utilized, when the governmental entity*  
4        *uses an administrative subpoena authorized by a*  
5        *Federal or State statute or a Federal or State*  
6        *grand jury or trial subpoena or any means*  
7        *available under subparagraph (B).”; and*

8        *(2) by amending the first sentence of subsection*  
9        *(d) to read as follows: “A court order for disclosure*  
10       *under subsection (b) or (c) may be issued by any*  
11       *court that is a court of competent jurisdiction de-*  
12       *scribed in section 3126(2)(A) and shall issue only if*  
13       *the governmental entity offers specific and articulable*  
14       *facts showing that there are reasonable grounds to be-*  
15       *lieve that the contents of a wire or electronic commu-*  
16       *nication, or the records or other information sought,*  
17       *are relevant and material to an ongoing criminal in-*  
18       *vestigation.”.*

19       *(b) PEN REGISTERS AND TRAP AND TRACE DE-*  
20       *VICES.—Section 3121 of title 18, United States Code, is*  
21       *amended—*

22                *(1) by redesignating subsection (c) as subsection*  
23                *(d); and*

24                *(2) by inserting after subsection (b) the following*  
25        *new subsection:*

1       “(c) *LIMITATION.*—A government agency authorized to  
2   install and use a pen register under this chapter or under  
3   State law, shall use technology reasonably available to it  
4   that restricts the recording or decoding of electronic or other  
5   impulses to the dialing and signalling information utilized  
6   in call processing.”.

S 2375 RS——2

S 2375 RS——3

S 2375 RS——4